

<p>DISTRICT COURT, ALAMOSA COUNTY, COLORADO, 8955 Independence Way Alamosa, CO 81101</p> <hr/> <p>THE PEOPLE OF THE STATE OF COLORADO Plaintiff,</p> <p>v.</p> <p>BARRY LEE MORPHEW, Defendant.</p>	<p>DATE FILED April 13, 2026 10:15 PM</p> <p>▲ COURT USE ONLY ▲</p>
<p>JANE FISHER-BYRIALSEN, #49133 FISHER & BYRIALSEN, PLLC 4600 S. Syracuse Street, 9th Floor Denver, CO 80237 (202)256-5664 Jane@fblaw.org</p> <p>DAVID BELLER, #35767 RECHT KORNFELD, P.C. 1600 Stout Street, Suite 1400 Denver, CO 80202 (303)573-1900 Fax: (303) 446-9400 david@rklawpc.com</p>	<p>Case Number: 25 CR 128</p>
<p align="center">[D-028] MOTION FOR INDIVIDUAL VOIR DIRE</p>	

Barry Morphew, by and through undersigned counsel, moves this Court for individual voir dire with each potential juror, in accordance with Mr. Morphew’s constitutional rights pursuant to Amendments VI and XIV to the U.S. Constitution and Article II, Sections 3, 16, 18 and 25 to the Colorado Constitution. As grounds, Mr. Morphew states:

1. The Court already entered an order allowing the use of individualized written jury questionnaires.

2. There has been considerable negative publicity surrounding this case. The nature of the allegations and extraordinary level of community involvement in and awareness of this matter raises grave doubts as to whether Mr. Morphew can receive a fair trial before an impartial jury.

3. Both the United States and Colorado Constitution guarantees Mr. Morphew the right to a trial by an impartial jury. A fair and impartial jury is a key element of a defendant's constitutional right to a fair trial under both the United States and Colorado Constitutions. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II §§ 16, 25; *People v. Abu-Nantambu-El*, 2019 CO 106, ¶14, 454 P.3d 1044, 1047; *People v. Stauch*, 2026 COA 22, 2026 WL 900099 (April 2, 2026); *People v. Clemens*, 2017 CO 89, ¶15. To protect this right, a trial court must excuse prejudiced or biased persons from the jury. *Clemens*, ¶15. These rights are fundamental. *Skilling v. United States*, 561 U.S. 358, 377 (2010).

4. “[A] principle reason for permitting peremptory challenges has always been to help secure the constitutional guarantee of trial by an impartial jury.” *People v. Abu-Nantambu-El*, 2019 CO 106, ¶19, 454 P.3d 1044, 1049, quoting *Vigil v. People*, 2019 CO 105, ¶16, 455 P.3d 332.

5. Mr. Morphew proposes that this Court take steps to safeguard these fundamental rights, including: (1) require that prospective jurors fill out and submit in advance of jury selection the written questionnaires – covering more than the standard demographic questions (see C.R.S. § 13-71-115) – in advance of jury selection, above and beyond , (2) require that all prospective jurors submit to individualized voir dire out of the hearing of the other prospective jurors and (3) direct that topics for individual voir dire not be restricted.

6. Courts have found that, in high-profile cases involving considerable pretrial publicity, the use of more in-depth juror questionnaires and individualized voir dire may be necessary to attempt to counter the prejudicial impacts of such publicity. *See Skilling*, 561 U.S. at 394-95 (citing to court’s use of questionnaires as a means of ferreting out bias and assuring impartiality). *See also People v. Harlan*, 8 P.3d 448, 470 (Colo. 2000).

7. More in-depth questionnaires are commonly used in homicides, high-profile cases, and cases that may evoke strong sentiments from jurors. *See e.g. Robles v. People*, 2013 CO 24, 302 P.3d 229 (noting that juror questionnaires were used in that case); *People In Int. of D.F.A.E.*, 2020 COA 89M, 482 P.3d 489, *cert. denied*, No. 20SC669 (Colo. Mar. 15, 2021)(same); *People v. Blassingame*, 2021 COA 11, ¶13, 488 P.3d 1184, 1187 (same).

8. The use of jury questionnaires and individualized voir dire of prospective jurors are necessary to safeguard Mr. Morphew's right to a fair trial before an impartial jury. In addition, they are necessary in this case to protect his right to the informed and intelligent exercise of peremptory challenges. While it is true that this Court has discretion regarding voir dire procedures, this Court does not have the discretion to fail to protect these constitutional rights. The exercise of this Court’s discretion over voir dire is limited by “the essential demands of fairness.” *Aldridge v. United States*, 283 U.S. 308, 310 (1931). A voir dire procedure that

effectively impairs a defendant's ability to exercise his challenges intelligently is ground for reversal. A defendant must at least have the opportunity to exercise his peremptory challenges "meaningfully." *United States v. Rucker*, 557 F.2d 1046, 1049 (4th Cir.1977). To be meaningful, the adequacy of voir dire examination must permit the defendant an "opportunity to make reasonably intelligent use of his peremptory challenges and challenges for cause." *Id.* As the Colorado Supreme Court stated in a case where the procedures "came precipitously close" to requiring reversal of a death sentence:

[A]n adequate voir dire is an essential part of the defendant's right to a fair trial. *See Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981). A searching voir dire also is necessary for the trial court to fulfill its responsibility to remove prospective jurors who cannot impartially weigh the evidence and follow the court's instructions.

People v Harlan, 8 P.3d 448, 462-463 (Colo. 2000).

9. Absent use of a thorough questionnaire and individual voir dire, the court runs a great risk that information disclosed in a group setting by one prospective juror will taint or "contaminate" the entire panel.

10. An excellent example of the importance of a thorough, probing individual voir dire arises in the context of implied bias. If a juror or her close relatives were personally involved in a situation involving a similar fact pattern to the charged crime, bias must be presumed. Factors giving rise to presumed or implied bias include: (1) "where the juror is apprised of such prejudicial information about the defendant that the Court deems it highly unlikely that [s]he can exercise independent judgment even if the juror states [s]he will; (2) "the existence of certain relationships between the juror and the defendant;" (3) "where a juror or his[er] close relatives had been personally involved in a situation involving a similar fact pattern;" and (4) "where it is revealed 'that the juror is an actual employee of the prosecuting agency, ... a close relative of one of the participants in the trial ... or ... a witness or somehow involved in the transaction.'" *Tinsley v. Borg*, 895 F.2d 520, 528 (9th Cir. 1990). *See Burton v. Johnson*, 948 F.2d 1150, 1157-1159 (10th Cir. 1991) ("a juror's assertion of impartiality is not dispositive;" there are circumstances in which "the inherently prejudicial nature of [a juror's] family situation," especially when combined with a lack of complete candor, can result in reversal of a conviction on constitutional grounds). It involves a determination of "whether an average person in the position of the juror in controversy would be prejudiced," i.e., whether even though the juror believes she or he can be impartial, the juror "is so closely connected to the circumstances at issue in the trial that bias is presumed." *United States v. Powell*, 226 F.3d 1181, 1188 (10th Cir. 2000). The defense must be allowed a searching inquiry to determine whether a challenge or use of a peremptory excusal is appropriate for such a juror.

11. By not simply bringing in each juror for individual questioning, there is a much greater probability that, on the day that jurors all come as a group for general voir dire, numerous jurors will need to speak with the court and parties privately anyway, causing a great delay for all the other jurors who have arrived.

12. The biggest practical issues for jurors will be their perceived hardship. If hardship questioning is done in front of all jurors, the other jurors “learn” how to get off (or on) the jury and predictably, all the hands start raising and more and more jurors request an opportunity to discuss their perceived hardships. While meaningful stipulations might remove many true hardship cases, many more will present in court.

13. This Court (not the parties) should conduct the initial hardship questioning of every juror. The parties should be permitted to follow up on hardship as necessary

14. This Court should allow 30 minutes per side for individual voir dire questioning of each juror. When each juror is brought in, typically, the Court has an introduction and conducts the questioning about hardship, and then allows follow up on hardship. Discussions about hardship, the length of trial, and the financial circumstances of the juror can easily consume several minutes. Many jurors are excused at that point in a case like this one, with the anticipated length of trial in this case. If a juror continues, the court and parties will have follow-up from the questionnaire answers and questions on very personal issues like exposure to domestic violence, discussion among the parties and this Court. There must also be a meaningful inquiry about pretrial publicity or any other topic, obviously outside the hearing of other jurors.

15. Many genuine hardship cases are identified very quickly (within a minute or two), and then no further questioning of those jurors is necessary, saving time for jurors who survive hardship questioning and are then asked specifics about what information/material they have been exposed to. With more time for questioning, it is more likely that the parties and the court will reach agreement during the individual questioning on what should happen with the juror. With less questioning, the parties and court end up learning nothing meaningful about the juror, consensus and stipulation is less likely, and arguments become more protracted. Sometimes, arguments about the need for more time end up taking longer than had the court simply extended the time by a few more minutes. Some jurors answer very clearly and quickly, some take a long time to meaningfully respond.

16. This Court should provide the “order list” prior to the start of individual voir dire. Such a step dramatically improves efficiency of the entire process, prejudices neither party, facilitates agreement among the parties, and improves the chances of winding up with a fair and impartial jury.

17. Mr. Morphew makes this motion, and all other motions and objections in this case, whether or not specifically noted at the time of making the motion or objection, as a continuing objection based upon (in addition to the above authority) the following grounds and authorities: the due process, trial by jury, right to counsel, equal protection, equal access to and administration of justice, right to defend life, cruel and unusual punishment, confrontation, compulsory process, right to remain silent, and right to appeal clauses of the federal and Colorado Constitutions, and the first, fourth, sixth, eighth, ninth, tenth, and fourteenth amendments to the United States Constitution, and article II, sections 3, 6, 7, 10, 11, 16, 18, 20, 23, 25, and 28 of the Colorado Constitution, Crim. P. 16, and RPC 3.8. Mr. Morphew cross-references and incorporates by reference all pleadings filed or to be filed in this case, and case law cited therein and at oral argument.

WHEREFORE, Mr. Barry Morphew, acknowledging that the Court for has already entered an order allowing the use of individualized written jury questionnaires and indicating individual voir dire will occur, files this motion to ensure he is on the record as requesting this motion requests individual voir dire with each potential juror,

Respectfully submitted this 13th day of April, 2026.

RECHT KORNFELD, P.C.

/s/ David Beller
David Beller, #3576

FISHER & BYRIALSEN, PLLC

/s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

Certificate of Service

I hereby certify that on April 13, 2026, I caused the foregoing to be filed with the Alamosa County District Court and a copy of the same to be served on the Alamosa County District Attorney's office via CCE-File Service.

/s/ Abby Clement
Paralegal at Fisher & Byrialsen PLLC